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6 IN THE UNITED STATES DISTRICT COURT  
7  
8 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
9

10 NANCY DARDARIAN, individually and  
11 on behalf of others similarly situated,

No. C 11-00946 WHA

12 Plaintiff,

13 v.

**ORDER REQUESTING BRIEFING  
REGARDING SUBJECT-MATTER  
JURISDICTION**

14 RESTORATION HARDWARE, INC.,

15 Defendant.  
16 \_\_\_\_\_/

17 Plaintiff herein brings a proposed class action asserting one claim of violation of  
18 California Civil Code Section 1747.08, the Song-Beverly Credit Card Act. Subject matter  
19 jurisdiction is solely asserted based on the Class Action Fairness Act (Compl. ¶ 5). Defendant  
20 answered the complaint and “admit[ted] that this Court has jurisdiction over this action.”  
21 Immediately after filing its answer, defendant filed a motion to dismiss or stay because of a  
22 pending state-court action that concerns the same claim as to the same defendant on behalf of  
23 a similar class. Defendant’s opening brief did not contest subject-matter jurisdiction based on  
24 CAFA. In a footnote in its reply in support of its motion, however, defendant states: “It has []  
25 come to [defendant]’s attention that the Court lacks subject matter jurisdiction over this action  
26 under the Class Action Fairness Act” (Reply 1 n.1). No more is said on the matter.

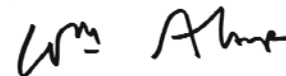
27 “Nothing is to be more jealously guarded by a court than its jurisdiction.” *In re*  
28 *Disciplinary Action Against Mooney*, 841 F.2d 1003, 1006 (9th Cir. 1988) (overruled on other  
grounds). If the parties fail to raise the issue, the absence of subject-matter jurisdiction must

1 be raised by the district court *sua sponte*. The parties' concessions that jurisdiction exists is  
2 not a bar to this inquiry: "A party cannot estop itself into jurisdiction where none exists."  
3 *Hajek v. Burlington N. R.R. Co.*, 186 F.3d 1105, 1108 (9th Cir. 1999). Federal courts must  
4 normally determine jurisdictional issues before considering the merits of a case. *See Steel Co.*  
5 *v. Citizens for a Better Env't*, 523 U.S. 83, 94–101 (1998).

6 Accordingly, this order finds that it is necessary to determine whether CAFA  
7 jurisdiction is properly invoked by plaintiff before proceeding to decide whether to dismiss or  
8 stay the action because of a substantially similar pending state-court action. The motion  
9 hearing and case management conference on June 16 are accordingly **VACATED**; they will be  
10 re-set by the Court if and when necessary. Both sides shall please file submissions concerning  
11 whether subject-matter jurisdiction over this action exists, of no more than 15 pages in length,  
12 by **JUNE 20, 2011**. The parties may then reply to the other side's submission, in no more than  
13 10 pages, by **JUNE 27, 2011**.

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15 **IT IS SO ORDERED.**

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17 Dated: June 6, 2011.



18 WILLIAM ALSUP  
19 UNITED STATES DISTRICT JUDGE  
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